

December 17, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-50739  
Conference Calendar

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ABAYOMI CHARLES AKOMOLAFE,  
also known as Charles Abayomi Akomolafe,

Plaintiff-Appellant,

versus

CORNELL CORRECTIONS CORP.,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:02-CV-122-FM  
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Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:\*

Abayomi Charles Akomolafe, federal prisoner #27712-077, has filed a motion seeking leave to proceed in forma pauperis ("IFP") on appeal. By moving for IFP, Akomolafe is challenging the district court's certification that an appeal from the dismissal of his civil rights complaint was not taken in good faith. See Baugh v. Taylor, 117 F.3d 197, 202 (5th Cir. 1997). In his IFP motion, Akomolafe argues that Cornell Corrections Corporation is liable for the alleged violations against him. His argument

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

lacks merit because Akomolafe may not bring a Bivens<sup>1</sup> claim against Cornell Corrections Corporation. See Correctional Servs. Corp. v. Malesko, 534 U.S. 61, 63 (2001).

Akomolafe has not shown that he will raise a nonfrivolous issue on appeal or that the district court erred in certifying that his appeal was not taken in good faith. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Accordingly, the instant motion for leave to proceed IFP on appeal is DENIED, and this appeal is DISMISSED AS FRIVOLOUS. See Baugh, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2. The dismissal of this appeal as frivolous counts as a "strike" for purposes of 28 U.S.C. § 1915(g), as does the district court's dismissal for failure to state a claim upon which relief may be granted. See Adepegba v. Hammons, 103 F.3d 383, 385-87 (5th Cir. 1996). We warn Akomolafe that if he accumulates three "strikes" under 28 U.S.C. § 1915(g), he will not be able to proceed IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

IFP MOTION DENIED; APPEAL DISMISSED; STRIKE WARNING ISSUED.

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<sup>1</sup> Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971).